



CITY OF BRUNSWICK

1 W. Potomac Street • Brunswick, Maryland 21716 • (301) 834-7500

Brunswick Planning Commission Minutes November 26, 2007

Commission Members Present: Vice Chair Connie Koenig, Secretary Walt Stull - Council Liaison, Don Krigbaum, Wayne Daugherty, and Ellis Burruss, Alternate.

Staff Present: Planning & Zoning Administrator Rick Stup, City Public Works Superintendent Al Danaher, and City Development Review Planner Jack Whitmore,

Vice Chair Koenig called the meeting to order at 7:00 PM.

Ms. Koenig requested all those in attendance who were going to speak to rise and be sworn in.

Minutes

The minutes of the August 27 & 29, 2007 meeting were reviewed and approved as amended. (MOTION by Mr. Burruss and seconded by Mr. Daugherty unanimously passed.)

Chair

Ms. Koenig stated that the night's events were being televised and recorded.

Mr. Stup stated that Mr. Gladstone was absent to recuperate from a medical procedure.

Mr. Stup informed the Planning Commission that Jack Whitmore had been promoted to the Development Review Planner, and had begun those duties.

Mr. Stup reviewed the Agenda Package and the distribution on the dais, and reminded the Commission that there will not be a meeting on December 17, 2007 due to lack of Agenda Items. The next scheduled meeting is January 28, 2008.

Old Business

Ordinances 458-468

Status of the Ordinances associated with the Landscape Manual.

Mr. Stup informed the Planning Commission that the Council had approved the Landscape Manual Text Amendments, but the Mayor vetoed them because of his concerns with the Lot of Record Requirements. He further explained the process if Planning Commission wished pursue them.

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Decision:

Motion by Mr. Burruss; seconded by Mr. Krigbaum to utilize the criteria as Planning Commission Guidelines for new Site Plan and Subdivision Review; and when Staff Schedule permits, Staff to work with the City Attorney to re-introduce the Ordinances exempting the Lots of Record.

VOTE: Yea 5 Nay 0

New Business

Public Hearing

Mr. Stup stated that the next two cases were scheduled for Public Hearing.

Annexation Request

Review of the Annexation Request and Resolution for the Cooper Property for a recommendation to the Mayor and Council. BR-ANNEX-07-01

Staff Presentation and Recommendation:

Mr. Stup presented the Staff Report for the Annexation Petition Request to annex 126 Acres +/- Cooper Farm located along Souder Road and Point of Rocks Road to be given an R-1 (Low Density Residential) Zoning Classification upon annexation into the City for the purpose of pursuing development under the PUD Development Option. Additional Agency Comments were also introduced into the record.

Staff recommends approval and forwarding of a recommendation of Approval to the Mayor & Council for the Petition to annex 126 acres +/- in accordance with the Staff Report with the following conditions:

1. An Annexation Agreement to be executed to specifically outline the proffers and required improvements to serve the development of the subject property.
2. A Water & Wastewater Service Agreement to be executed as part of the PUD Process during the Phase I PUD Application.
3. Development of the property to be under the requirements of the PUD Overlay Development Option.
4. The Cooper application to amend the City Charter Boundary (De-Annexation) is approved by the Council.
5. An additional Annexation Plat suitable for recordation in the Frederick County Court House to be provided with the required City Signatures and recorded at the expense of the applicant.
6. An Annexation Description to be provided to Staff's satisfaction.
7. A revised City Boundary Description to be provided by the applicant that reflects the new City Boundary.
8. The new exterior Boundary of the City to be staked with permanent markers.
9. All required documents & plans are completed to Staff satisfaction.
10. Address any additional Staff comments.

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11. Address all applicable agency comments.
12. Applicant bound by their testimony.

Mr. Stup answered questions from the Commission.

Applicant:

W. Jerome Offutt, Offutt, Horman & Burdette P.A., and Mr. Donavon Corum, Rodgers Consulting, presented the applicant's case, stating that they concurred with the Staff Report. It was noted that Gary & Kay Cooper were present to answer any questions.

Messrs. Offutt and Corum with clarification by Mr. Stup answered Commission questions to include the following:

Mr. Burruss questioned taxes and public services.

Mr. Stull questioned park use.

Mr. Krigbaum questioned the risk that the City would be required in the future to provide any services to serve the new development.

Public Comment:

Karin Tome distributed a list of questions/concern to the Planning Commission, which were partially answered. Staff will prepare a response to clarify some of her concerns that were not answered and that are appropriate for Staff to answer.

Kim Cable commented on taxes and water & sewer, stating that the application was premature.

Gary Cooper spoke on the history of the family in the Brunswick Community and their cooperation with the community.

Rebuttal:

Mr. Corum responded to questions with regard to the Annexation Package Information and Petition.

Mr. Offutt responded to the tax questions.

Decision:

Mr. Krigbaum made a motion to approve the Annexation Petition Request in accordance with the Staff Recommendation and Staff Report, and forward that recommendation of approval to the Mayor & Council; Mr. Daugherty seconded the motion.

VOTE: Yea 5 Nay 0

Charter Boundary Amendment Request

**Review of the Charter Boundary Amendment Request for the Cooper Property
Annexation for a recommendation to the Mayor and Council. BR-CHARTER-07-01**

Staff Presentation and Recommendation:

Mr. Stup presented the Staff Report for the De-Annexation Area located south of Point of Rocks Road across from the Galyn Manor entrance. It proposes to de-annex the current panhandle connection portion of the Galyn Manor Annexation, by amending the Charter Boundary in accordance with advice from the Attorney General's Office. It was further stated that Charter Amendments don't generally come before the Planning Commission for comment. However, because it involved a previous Annexation, Staff felt that the public should have a chance to comment on the application.

Staff recommends approval of the Charter Boundary Amendment to reduce the area of the City by 0.6 acres +/- of the current panhandle connection of the Biser Annexation with the following conditions:

1. The Cooper Annexation is approved by the Council.
2. All required documents & plans are completed to Staff satisfaction.
3. Address any additional Staff comments.
4. Address all applicable agency comments.
5. Applicant bound by their testimony.

Additionally, Staff is instructed to forward the Planning Commission recommendation to the Mayor & Council in the Staff Report.

Mr. Stup answered questions from the Commission.

Applicant:

Mr. Donavon Corum, Rodgers Consulting, presented the applicant's case.

Public Comment:

None.

Rebuttal:

None.

Decision:

Mr. Burruss made a motion to approve the Charter Boundary Amendment to de-annex the subject area in accordance with the Staff Recommendation and Staff Report, and that Staff is to forward the recommendation of approval to the Mayor & Council in the form of a Staff Report; Mr. Krigbaum seconded the motion.

VOTE: Yea 5 Nay 0

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Mr. Stup made the following statement and exited the meeting room. "The next case will be presented by the Development Review Planner, Jack Whitmore, who normally processes such cases.

However, I wish to make the following statement.

The applicant raised objections at the TAC Meeting to my participation in this case, and it is my understanding that the applicant has continued to raise these objections through their lawyer. In my view there is no basis for these objections and they are without merit. However, in an interest of allowing the Planning Commission focus on the zoning issues related to the case instead of the objections to my participation, I will refrain from the presenting or participating in the case."

Zoning – Site Plans

Lot 259 Brunswick Industrial Co. Addition to Brunswick Residential Site Plan – Request for Residential Site Plan Approval for proposed new single family dwelling, located on the north side of East F Street, West of Second Avenue. Zoning Classification: OS; Water and Sewer Classification: W-1, S-1; BR-IP-03-02-SP

Staff Presentation and Recommendation:

Mr. Whitmore presented the Staff Report for the Residential Site Plan for Lot 259, and outlined the issues.

Staff recommends approval of the application in accordance with the Staff Report and the following specific conditions:

1. Planning Commission finds the application complies with Article 8, Section 8.2 of the Zoning Ordinance.
2. The applicant must comply with the conditions of Article 8, Section 8.2 of the Zoning Ordinance.
3. The plan must be revised to note that the height is to be measured from the most restrictive grade from the street.
4. The Street Cross-section must be satisfactory to Public Works and the Planning Commission.
5. Improvement Plans and PWA Package Process are required to be submitted for Planning Commission Action and processing for applicable Mayor & Council approval.
6. Revise note 10 to reflect the correct length of the driveway on-site.
7. Revise the Site Plan to note the parking data for Required Parking and Provided Parking, and the garage needs to be noted with the housing type.
8. If the Planning Commission determines that landscaping is required, it must be noted and graphically shown on the Site Plan.
9. If Street lighting is required, it must be shown on the Site Plan to Public Works satisfaction.
10. Address Staff comments.
11. Address agency comments.

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12. Final review and approval by Staff.
13. PWA Package submission and approval.
14. Applicant bound by their testimony.

Messrs. Whitmore and Danaher answered questions from the Commission.

Applicant:

Mr. Sponseller presented the applicant's case. Mr. Sponseller stated that he only had issues with Items 8 and 9 but would comply with the remaining issues if approved as such. He also stated that the slope of Lot 259 is within the requirements of the OS Zoning district.

Commission Questions:

Ms. Koenig then asked if there were any questions of the applicant.

Mr. Daugherty asked Mr. Sponseller where the closest streetlamp was in relation to the property. Mr. Sponseller said there was a streetlamp across the street.

Mr. Krigbaum asked Mr. Sponseller how, if based on the Topography Survey in 2002 Lot 259 did not meet the 35% Slope Requirement, how does it now? Mr. Sponseller said that he did not recall that.

Ms. Koenig stated that a file letter dated 2002 from the applicant under the signature of Ms. Winpigler indicated that the subject lot did not meet criteria for development.

Ms. Koenig asked the applicant if he was aware of the size of the retaining wall that is on the property. Mr. Sponseller stated that he could not. Ms. Koenig then said that she had measured the wall and that from her calculations it was five (5) feet tall. Ms. Koenig then stated that the dirt on top of the wall appeared to be filler and thus graded.

Ms. Koenig then asked the applicant if he could tell the Commission why the slope had changed. Mr. Sponseller stated that he was not. Ms. Koenig then informed the applicant that the Planning Commission would not be able to approve the application unless the change of slope could be explained. Mr. Sponseller stated again that he could not explain the change in slopes.

Public Comment:

Mr. Harrington stated that the true cause of the disturbance to the lot was due to grading while work was conducted on Lot 260. He stated that Mr. Sponseller's surveyor had informed him that Lot 259 could not be developed due the OS Zoning designation. Mr. Harrington also asked how the City can protect Open Space when regulations related to the OS Zoning classification can be overridden.

Rebuttal:

Ms. Leslie Powell, the attorney for the applicant, was sworn in at this time and questioned the validity of the Planning Commissions role in this case due to this being a single Lot of Record. Ms. Powell also

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referenced Dolan V. City of Tigard in relation to Brunswick causing undue hardship on the applicant that could be interpreted as a taking.

Ms. Koenig asked Ms. Powell if to the best of her knowledge was this Lot of Record currently the same slope as when the lot was originally recorded? Ms. Powell stated that she did not know.

Mr. Sponseller then stated that he would like the application to be approved per his comments.

Ms. Koenig then asked if there were additional comments:

Mr. Harrington addressed the podium and asked if Ms. Samantha Winpigler was in attendance. Ms. Winpigler stood up at which time Ms. Powell objected due to Mr. Harrington not being a member of the Commission, and not having the authority to ask such questions.

Mr. Burruss then asked if Ms. Winpigler was in the audience and to address the Commission, and why she had written the file letter from 2002 previously referenced.

Ms. Winpigler stated that she wrote the letter based on information that at the time she thought to be correct. Mr. Stull asked in what position Ms. Winpigler was working for Mr. Sponseller at the time the letter was written. Ms. Winpigler stated she was in the position of purchasing for Mr. Sponseller.

Decision:

Mr. Burruss made a motion to continue the meeting until January 28, 2008 to allow additional comment from the City Attorney, City Engineer, Public Works and Lavell and Associates regarding the determination of slope change on the property and legal issues raised. Mr. Stull seconded the motion.

Questions for the City Attorney were presented throughout the meeting and consolidated into the following:

- If the Planning Commission denies the request, is it considered a taking of Lot 259?
- If the Planning Commission denies the request, would Infrastructure Improvements for Lot 260 be considered a taking of Lot 259?
- Did the changes to the subject property by the applicant, specifically grading, be considered contrary to the Zoning Ordinance, Section 8.2?

VOTE: Yea 5 Nay 0

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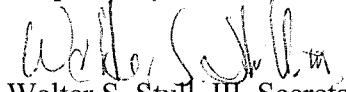
Public Comment:

Mr. Whitmore reminded the Commission that the December Meeting is cancelled due to lack of Agenda Items, and that the next scheduled meeting was January 28, 2008 at 7:00 PM.

Adjournment

The meeting was adjourned at 9:35 PM.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Walter S. Stull, III". The signature is written in a cursive, flowing style.

Walter S. Stull, III, Secretary
Brunswick Planning Commission